

104TH CONGRESS
1ST SESSION

S. 161

To amend the Internal Revenue Code of 1986 to reduce the rate of estate tax imposed on family-owned business interests.

IN THE SENATE OF THE UNITED STATES

JANUARY 5, 1995

Mrs. MURRAY introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to reduce the rate of estate tax imposed on family-owned business interests.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Family Busi-
5 ness Preservation Act”.

6 **SEC. 2. REDUCED ESTATE TAX RATE ON FAMILY-OWNED**
7 **BUSINESS INTERESTS.**

8 (a) IN GENERAL.—Part I of subchapter A of chapter
9 11 of the Internal Revenue Code of 1986 (relating to tax

1 imposed) is amended by adding at the end the following
 2 new section:

3 **“SEC. 2003. REDUCED RATE ON FAMILY-OWNED BUSINESS**
 4 **INTERESTS.**

5 “(a) IN GENERAL.—In the case of an estate of a de-
 6 cedent to which this section applies, the tax imposed by
 7 section 2001 shall not exceed the sum of—

8 “(1) a tax computed at the rates and in the
 9 manner as if this section had not been enacted on
 10 the greater of—

11 “(A) the sum described in section
 12 2001(c)(1) reduced by the qualified family-
 13 owned business interests, or

14 “(B) the sum (if any) described in section
 15 2001(c)(1) taxed at a rate below the applicable
 16 rate, plus

17 “(2) a tax equal to the applicable rate of the
 18 portion of the taxable estate in excess of the amount
 19 determined under paragraph (1).

20 “(b) ESTATES TO WHICH SECTION APPLIES.—This
 21 section shall apply to an estate if—

22 “(1) the decedent was (at the date of his or her
 23 death) a citizen of the United States,

24 “(2) the sum of—

1 “(A) the value of the qualified family-
2 owned business interests which are included in
3 determining the gross estate and which are ac-
4 quired from or passed from the decedent to a
5 qualified heir of the decedent, and

6 “(B) the amount (taken into account
7 under subsection 2001(b)(1)(B)) of the ad-
8 justed taxable gifts of such interests to mem-
9 bers of the decedent’s family,
10 exceeds 50 percent of the adjusted gross estate, and

11 “(3) during the 8-year period ending on the
12 date of the decedent’s death there have been periods
13 aggregating 5 years or more during which—

14 “(A) such interests were owned by the de-
15 cedent or a member of the decedent’s family,
16 and

17 “(B) there was material participation by
18 the decedent or a member of the decedent’s
19 family in the operation of the business to which
20 such interests relate.

21 “(c) APPLICABLE RATE.—For purposes of this sec-
22 tion, the applicable rate is—

23 “(1) 15 percent if the requirement of subsection
24 (b)(3)(B) is met by a member of the decedent’s fam-
25 ily, and

1 “(2) 20 percent in any other case.

2 “(d) QUALIFIED FAMILY-OWNED BUSINESS INTER-
3 EST.—

4 “(1) IN GENERAL.—For purposes of this sec-
5 tion, the term ‘qualified family-owned business inter-
6 est’ means—

7 “(A) an interest as a proprietor in a trade
8 or business carried on as a proprietorship;

9 “(B) an interest as a partner in a partner-
10 ship carrying on a trade or business, if such
11 partnership had 15 or fewer partners; or

12 “(C) stock in a corporation carrying on a
13 trade or business if such corporation had not
14 more than the number of shareholders specified
15 in section 1361(b)(1)(A).

16 Such term shall not include any interest which is
17 readily tradable on an established securities market
18 or otherwise.

19 “(2) RULES FOR APPLYING PARAGRAPH (1).—
20 For purposes of paragraph (1), rules similar to the
21 rules of paragraphs (2), (3), (4), and (6) of section
22 6166(b) shall apply.

23 “(e) RECAPTURE OF TAX BENEFIT IF INTERESTS
24 NOT HELD FOR 10 YEARS.—

25 “(1) IN GENERAL.—If—

1 “(A) during the 10-year period beginning
2 on the date of death of the decedent—

3 “(i)(I) any portion of a qualified fam-
4 ily-owned business interest is distributed,
5 sold, exchanged, or otherwise disposed of,
6 or

7 “(II) money and other property at-
8 tributable to such an interest is withdrawn
9 from such trade or business, and

10 “(B) the aggregate of such distributions,
11 sales, exchanges, or other dispositions and with-
12 drawals equals or exceeds 20 percent of the
13 value of such interest, or

14 there is hereby imposed an additional estate tax.

15 “(2) ADDITIONAL ESTATE TAX.—

16 “(A) IN GENERAL.—The amount of the
17 additional estate tax imposed by paragraph (1)
18 shall be the applicable percentage of the excess
19 of what would have been the estate tax liability
20 but for subsection (a) over the adjusted estate
21 tax liability.

22 “(B) APPLICABLE PERCENTAGE.—For
23 purposes of subparagraph (A), the term ‘appli-
24 cable percentage’ means 100 percent reduced
25 (but not below zero) by the product of—

1 “(i) 10 percentage points, and

2 “(ii) the number of years (if any)
3 after the date of the decedent’s death
4 which the year during which the additional
5 estate tax is imposed by paragraph (1) is
6 after the 1st year after the date of the de-
7 cedent’s death.

8 “(C) ADJUSTED ESTATE TAX LIABILITY.—

9 For purposes of subparagraph (A), the term
10 ‘adjusted estate tax liability’ means the estate
11 tax liability increased by the amount (if any) of
12 any prior additional estate tax imposed by sub-
13 section (f).

14 “(D) ESTATE TAX LIABILITY.—For pur-
15 poses of this paragraph, the term ‘estate tax li-
16 ability’ means the tax imposed by section 2001
17 reduced by the credits allowable against such
18 tax.

19 “(3) CERTAIN RULES TO APPLY.—For purposes
20 of this subsection, rules similar to the rules of sub-
21 paragraphs (B), (C), and (D) of section 6166(g)(1)
22 shall apply.

23 “(f) RECAPTURE OF PORTION OF TAX BENEFIT IF
24 HEIRS CEASE TO MATERIALLY PARTICIPATE DURING 10
25 YEARS AFTER DEATH.—

1 “(1) IN GENERAL.—If—

2 “(A) the applicable rate which applied
3 under subsection (a) to the estate of the dece-
4 dent was 15 percent,

5 “(B) at any time during the 10-year period
6 beginning on the date of death of the decedent,
7 no qualified heir materially participates in the
8 operation of the business to which the qualified
9 family-owned business interests relate, and

10 “(C) there is no recapture under sub-
11 section (e) on or before the earliest date during
12 such 10-year period that no qualified heir so
13 materially participated,

14 there is hereby imposed an additional estate tax.

15 “(2) ADDITIONAL ESTATE TAX.—The amount
16 of the additional estate tax imposed by paragraph
17 (1) shall be the applicable percentage of the excess
18 of what would have been the estate tax liability but
19 for subsection (c)(1) over the estate tax liability.

20 “(3) DEFINITIONS.—For purposes of paragraph
21 (2), the terms ‘applicable percentage’ and ‘estate tax
22 liability’ have the meanings given to such terms by
23 subsection (e).

24 “(g) OTHER DEFINITIONS.—For purposes of this
25 section, the terms ‘qualified heir’ and ‘member of the fam-

1 ily' have the meanings given to such terms by section
2 2032A(e).''

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for part I of subchapter A of chapter 11 of such Code
5 is amended by adding at the end the following new item:

“Sec. 2003. Reduced rate on family-owned business interests.”

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to estates of decedents dying after
8 the date of the enactment of this section.

9 **SEC. 3. LIMITATION ON 4 PERCENT RATE OF INTEREST ON**
10 **ESTATE TAX EXTENDED UNDER SECTION 6166**
11 **NOT TO APPLY TO ESTATE TAX ATTRIB-**
12 **UTABLE TO QUALIFIED FAMILY-OWNED BUSI-**
13 **NESS INTERESTS.**

14 (a) IN GENERAL.—Paragraph (2) of section 6601(j)
15 of the Internal Revenue Code of 1986 (relating to 4-per-
16 cent portion) is amended by adding at the end the follow-
17 ing new flush sentence:

18 “Subparagraph (B) shall not take into account the
19 amount of the tax imposed by chapter 11 which is
20 attributable to qualified family-owned business inter-
21 ests (as defined in section 2003(b)) unless an elec-
22 tion is in effect under section 2032A with respect to
23 the estate.”.

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to estates of decedents dying after
 3 the date of the enactment of this section.

4 **SEC. 4. EXTENSION OF ALTERNATE VALUATION DATE TO 40**
 5 **MONTHS WITH RESPECT TO ESTATE CON-**
 6 **SISTING LARGELY OF QUALIFIED FAMILY-**
 7 **OWNED BUSINESS INTERESTS.**

8 (a) IN GENERAL.—Section 2032 of the Internal Rev-
 9 enue Code of 1986 (relating to alternate valuation) is
 10 amended by redesignating subsections (c) and (d) as sub-
 11 sections (d) and (e), respectively, and by inserting after
 12 subsection (b) the following new subsection:

13 “(c) ESTATES LARGELY CONSISTING OF QUALIFIED
 14 FAMILY-OWNED BUSINESS INTERESTS.—In the case of
 15 an estate to which section 2003 applies—

16 “(1) subsection (a) shall be applied by sub-
 17 stituting ‘40 months’ for ‘6 months’ each place it
 18 appears, and

19 “(2) section 6075(a) (relating to time for filing
 20 estate tax return) shall be applied by substituting
 21 ‘43 months’ for ‘9 months’.”

22 (b) EFFECTIVE DATE.—The amendment made by
 23 this section shall apply to estates of decedents dying after
 24 the date of the enactment of this section.

1 **SEC. 5. INCREASE IN GIFT TAX EXCLUSION.**

2 (a) IN GENERAL.—Subsection (b) of section 2503 of
3 the Internal Revenue Code of 1986 (relating to taxable
4 gifts) is amended by adding at the end the following new
5 sentence: “In the case of gifts made during a calendar
6 year by a donor to ancestors or lineal descendants of the
7 donor, the aggregate amount of such gifts which are not
8 included in the total amount of gifts by reason of this sub-
9 section shall not be less than 15 percent of the donor’s
10 earned income (as defined in section 32(c)(2)) for the tax-
11 able year ending with or within such calendar year.”

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall apply to gifts made in calendar years
14 beginning after the date of the enactment of this section.

15 **SEC. 6. INCREASE IN UNIFIED ESTATE AND GIFT TAX**
16 **CREDITS.**

17 (a) ESTATE TAX CREDIT.—

18 (1) Subsection (a) of section 2010 of the Inter-
19 nal Revenue Code of 1986 (relating to unified credit
20 against estate tax) is amended by striking
21 “\$192,800” and inserting “the applicable credit
22 amount”.

23 (2) Section 2010 of such Code is amended by
24 redesignating subsection (c) as subsection (d) and by
25 inserting after subsection (b) the following new sub-
26 section:

1 “(c) APPLICABLE CREDIT AMOUNT.—For purposes
2 of this section—

3 “(1) IN GENERAL.—The applicable credit
4 amount is the amount of the tentative tax which
5 would be determined under the rate schedule set
6 forth in section 2001(c) if the amount with respect
7 to which such tentative tax is to be computed were
8 \$600,000.

9 “(2) COST-OF-LIVING ADJUSTMENTS.—In the
10 case of any decedent dying in a calendar year after
11 December 31, 1995, the \$600,000 amount set forth
12 in paragraph (1) shall be increased by an amount
13 equal to—

14 “(A) \$600,000, multiplied by

15 “(B) the cost-of-living adjustment deter-
16 mined under section 1(f)(3) for such calendar
17 year by substituting ‘calendar year 1996’ for
18 ‘calendar year 1992’ in subparagraph (B)
19 thereof.

20 Any increase determined under the preceding sen-
21 tence shall be rounded to the nearest multiple of
22 \$1,000.”

23 (3) Paragraph (1) of section 6018(a) of such
24 Code is amended by striking “\$600,000” and insert-

1 ing “\$600,000 (adjusted as provided in section
2 2010(c)(2)”.

3 (b) UNIFIED GIFT TAX CREDIT.—Paragraph (1) of
4 section 2505(a) of such Code is amended by striking
5 “\$192,800” and inserting “the applicable credit amount
6 in effect under section 2010(c) for such calendar year”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to the estates of decedents dying,
9 and gifts made, after December 31, 1995.

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